



Legislative Research Council

SOUTH DAKOTA CODE COMMISSION MINUTES

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**Ninety-fourth Meeting
Friday, November 14, 2003
Conference Call**

**Room 413
State Capitol
Pierre, SD**

**Conference Room
DeMersseman Jensen Christianson
Stanton & Huffman Law Office
516 Fifth Street
Rapid City, SD**

The ninety-fourth meeting of the South Dakota Code Commission was called to order by Chair Michael DeMersseman at 11:00 a.m., November 14, 2003, via telephone conference call in the conference room of the DeMersseman Jensen Christianson Stanton & Huffman Law Office, Rapid City, South Dakota, and in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Commissioners Eric Bogue, Michael DeMersseman (via telephone), Lee McCahren (via telephone), and Matt McCaulley (via telephone). Excused was Commissioner Tom Lee.

In attendance as interested parties were Mr. Lary Zastrow, State Bar of South Dakota; Mr. Tom Leighton, West Group (via telephone); Mr. Rick Brown, West Group (via telephone); Ms. Ellen Gillespie, West Group (via telephone); and Mr. Dave Gerdes, representing LEXIS Publishing (via telephone).

Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council. For the purpose of continuity, these minutes are not necessarily in chronological order.

Approval of Minutes

Commissioner Bogue moved, seconded by Commissioner McCaulley, to approve the minutes of the June 20, 2003, meeting. Motion carried unanimously on a roll call vote with 4

ayes, 1 excused. Members voting aye: Bogue, DeMersseman, McCahren, and McCaulley. Excused: Lee.

Agenda Items

Chair DeMersseman stated that the general purpose of the meeting was to discuss the publishing contract for the South Dakota Codified Laws (Code) between the State of South Dakota and West Publishing Corporation, dba as West Group (West), and enter into such agreement.

Mr. Decker reported that on November 13, 2003, Mr. Tom Leighton, West, provided a final rough draft of the contract to him. It was the consensus of both parties that, with a few minor changes, a contract had been agreed upon.

Mr. Decker reviewed the minor changes:

- On page 1, paragraph 1. Definitions, subparagraph b, sentence 2, delete "*Advance Code Service*" and insert "Annotated Pamphlet";
- On page 5, paragraph 10. Code Counsel Copy, paragraph 2, insert "the Legislative Research Council's staff," after "the Code Counsel,";
- On page 5, paragraph 12. Advance Code Service, change the heading of the paragraph to "Annotated Pamphlet"; and
- On page 8, paragraph 24. Contract Term and Termination, sentence 1, change the date from "August 1, 2003" to "November 14, 2003".

Mr. Leighton stated that he concurred with these changes.

Mr. Dave Gerdes, attorney for Lexis-Nexis, stated that it was his understanding that there was no provision with regard to licensing to allow Lexis online access to the Code, as discussed at the last meeting. Mr. Decker responded that there was no provision in the previous contract that allowed a special license to other publishers.

Mr. Gerdes stated that there were two references in the proposed contract regarding exclusive license to use the parts of the code that are subject to the State's copyright. Mr. Decker stated that West may assign the license upon mutual agreement of the parties and that the contract provides that West may assign this license to an affiliate of the Thomson Corporation. Mr. Gerdes stated that Lexis-Nexis has had licensing agreements with Michie and West. West has not executed a similar licensing agreement and that a licensing provision was not in the proposed contract and that Lexis-Nexis objects to not including this in the contract. Chair DeMersseman stated that to put such language in the contract would be changing the Request for Proposal.

With regard to the publishing schedule, Mr. Rick Brown, on behalf of West, stated that April was their suggestion for publishing the 2004 legislation in volumes; he would do what he could to make it earlier. He stated that March 1 may be feasible.

Mr. Decker explained the process: once bills are signed by the Governor, Mr. Decker forwards the enrolled bills to the publisher and they work together on the catchlines and deciding what chapters the enrolled bills are assigned to. He stated that the publisher also looks at the cross references and annotations.

In response to Chair DeMersseman's question as to when the Commission would like to see the Code printed, Commissioner McCahren stated that he would like to see it done later and better. He would like to have it shortly before the State Bar's annual meeting in June. Commissioner McCaulley stated that he would like to see the Code published sooner rather than later, preferably before session as he would like to have a revised Index as soon as possible. Commissioner Bogue stated that he would like to see it later rather than sooner.

Mr. Decker stated that it did not make any difference to staff whether the Code is published in April or June. If the Code is published sooner, any corrections could be made part of the pocketparts. He is concerned with a smooth transition of the database to West.

Mr. Lary Zastrow, State Bar, stated that he had two telephone calls within the last week stating that Lexis-Nexis is telling attorneys that there is no inventory of the Code to sell. In response to Commissioner Bogue's question as to the status of the stockpiles that Lexis-Nexis wanted to sell West, Mr. Gerdes stated that he would check on this matter. Mr. Zastrow asked if the CD-ROM version would be available sooner than the printed volumes. West responded that they could provide an unannotated CD-ROM version faster.

Mr. Zastrow inquired if the Evidence Manual was still part of the Code or if it would need to be purchased separately. Mr. Leighton responded that one copy of the Evidence Manual will be provided with the upkeep of the Code, and that any additional copies would be available at a cost of \$20 per copy. Mr. Leighton will send a letter to the Code Counsel stating same.

Mr. Zastrow asked for clarification regarding the General Index and at the end of the contract who would own the copyright to the General Index. Mr. Decker stated that the point of conflict is on page 1, paragraph 1. Definitions, subparagraph b - where it states the Code includes the General Index and is included in the copyrightable portion of the Code. On page 2, paragraph 2, the contract states that West has a copyright to the General Index. Mr. Leighton stated that West will be creating the Index from scratch and that West would be claiming copyright to it.

Mr. Zastrow wanted to know if in the first year after the contract is terminated would the Code Commission still have a copyright to the Index.

In the proposed contract on page 2, paragraph 6, it provides that both parties have a copyright.

To clarify the copyright issue regarding the Index, Mr. Decker stated that on page 2, last paragraph, line 4 after "code" insert "including the entire General Index". Mr. Leighton agreed.

Commissioner McCahren moved, seconded by Commissioner McCaulley, that the Commission authorize Chair DeMersseman to execute the Contract for the Publication of the South Dakota Codified Laws, as amended, with West Publishing Corporation, doing business as West Group. Motion prevailed on a roll call vote with 4 ayes, and 1 excused. Members voting aye: Bogue, DeMersseman, McCahren, and McCaulley. Excused: Lee.

Chair DeMersseman appointed the following members to serve on the Committee on Style: Commissioners Bogue, McCahren, and DeMersseman.

Following discussion on the date for publication of the Code, Mr. Brown stated that if the 2004 legislation was to be included in the first printing of the Code, West would be able to publish it before the State Bar meeting in June, not in April. It was the consensus of the group that there would be no pocketparts and that the Code would be printed and shipped no later than the end of May.

Mr. Gerdes requested an electronic copy of the executed contract. Staff will send a copy of the contract after the contract is executed.

Commissioner McCaulley moved, seconded by Commissioner McCahren, to adjourn. Motion prevailed unanimously on a roll call vote with 4 ayes, 1 excused. Members voting aye: Bogue, DeMersseman, McCahren, and McCaulley. Excused: Lee.

The meeting adjourned at 11:50 a.m.



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